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CHARLES ELMORE CR
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Supreme Court of the United States

OCTOBER TERM, 1936.

No. 446

AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, A CORPORATION,
PETITIONER,

vs.

EDWIN P. HAWORTH AND CORA M. HAWORTH.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

E. R. MORRISON,
Counsel for Petitioner.

CHAS. C. BYERS,
DOUGLAS STRIPP,
MORRISON, NUGENT, WYLDER & BERGER,
Of Counsel.

E. L. MENDENHALL, INC., 8 WEST 9TH ST., KANSAS CITY, MO.

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PETITIONER,

VS.

EDWIN P. HAWORTH AND CORA M. HAWORTH.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

The Aetna Life Insurance Company of Hartford, Connecticut, prays that a writ of certiorari issue to review the decree of the Circuit Court of Appeals for the Eighth Circuit entered in the above-entitled case on July 27, 1936.

OPINIONS BELOW.

The District Court opinion (R. 130), written by District Judge Merrill E. Otis, was filed August 22, 1935, and is reported in 11 F. Supp. 1016. The opinion of the Circuit Court of Appeals (R. 145), dissenting opinion (R. 150), is reported in 84 F. (2d) 695.

JURISDICTION.

The decree below was entered July 27, 1936 (R. 155), affirming the decree of the District Court sustaining a motion to dismiss the bill of complaint and dismissing the cause (R. 134); petition for rehearing was denied August 31, 1936 (R. 183). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED.

This case involves the scope to be given to the Federal Declaratory Judgment Act.

The specific question presented is whether there is an "actual controversy," on which a suit under the Act by a life insurance company against a policyholder may be based, when the policyholder makes a claim to disability benefits consisting of a permanent waiver of premiums and present and future cash payments, without bringing suit, and demands repeatedly that the policies be kept in force by reason of his alleged total disability, whereas the company denies that he is totally disabled

and insists the policies are lapsed for nonpayment of premium.

Stated more generally, the question is whether a party to a contract, charged with liability thereunder and harassed with claims considered unjust, may, as in England, obtain a declaration of his nonliability or privilege (absence of duty), a declaration that the claims are unfounded, and a declaration that, as the petitioner asserts, the contract is no longer in force by reason of defendant's breach and that hence petitioner is free from the obligations claimed against him under the contract.

STATUTE INVOLVED.

The statute involved is the Declaratory Judgment Act, Section 274d of the Judicial Code (49 Stat. 1027, 28 U. S. C. A. 400) which provides that in cases of actual controversy the courts of the United States shall have power, upon appropriate pleading, to declare rights and other legal relations of any interested party petitioning therefor, whether or not further relief is or could be prayed.

STATEMENT.

The petition is somewhat long because of the necessity of setting forth the provisions of the five separate policies involved, but the facts alleged, in so far as petitioner's right to a declaratory judgment is concerned, are few and simple. They are as follows:

At various dates prior to 1930 petitioner issued to respondent, Edwin P. Haworth, five policies of life insurance in the aggregate amount of $40,000.00 (R. 3, 7, 10, 13 and 16). Cora M. Haworth was named as beneficiary in these policies and was, therefore, joined as a defendant in the suit. Each of these five policies contained a provision for benefits in the event of the permanent total disability of the insured. This benefit in three of the policies consisted of a waiver of premiums, the life insurance remaining in force (R. 11, 13 and 16); in one policy, of a waiver of premiums and payment of a monthly income (R. 8); and in the remaining policy, of the payment of the face amount of the policy in twenty annual installments or the payment of a life annuity to the insured in lieu of the death benefit provided in the policy (R. 4). By the terms of the four policies first mentioned the same benefits are payable at death and the same cash and loan values are available, whether the premiums are paid or are waived on account of disability (Exhibit "B," R. 59; Exhibit "C," R. 79; Exhibit "D," R. 99; Exhibit "E," R. 119).

In 1930 and 1931 the respondent, Edwin P. Haworth, ceased paying premiums on four of said policies and made claim for total permanent disability benefits thereunder (R. 9, 12, 14, 17 and 19). He continued to pay premiums on the remaining policy until 1934, after which time he made claim for disability benefits thereunder (R. 6). He has repeatedly renewed his claim to the disability benefits under the several policies and demanded that they be kept in force by reason of the premium waiver provisions (R.

19). The claims have been presented in the form of affidavits of the respondent, entitled "Claim of Benefit Under Total Disability Provision," accompanied by sworn physician's certificates (R. 20 and Exhibit "F," R. 127).

Petitioner denied that Edwin P. Haworth was permanently and totally disabled, and denied that he was entitled to the disability benefits described in the policies (R. 6, 10, 13, 15, 18 and 19). If insured is not disabled, as claimed by petitioner, all of the policies have lapsed for nonpayment of premiums (R. 6, 9, 12, 15 and 17), four of them have no value (R. 9, 12, 15 and 18), and the fifth has a value of only $45.00 extended insurance (R. 6). If Edwin P. Haworth has been totally and permanently disabled as claimed by him, the five policies are in full force and petitioner is now obligated to pay to him the monthly installments of cash disability benefits provided for under two of the policies. In that event, said respondent is further entitled to make claim at any time for the cash surrender values accumulating on said policies by reason of provisions for waiver of premiums, or at his death, Cora M. Haworth, as beneficiary, will be entitled to receive the face of the policies less the loans thereon. If these policies are in force, petitioner is required to carry reserves therefor in excess of $20,000.00, in order to meet its obligations thereunder (R. 22).

Up to the time this suit was brought, on the 19th of October, 1935, neither of the respondents had actually brought any suit to enforce the claims which had then been made by Edwin P. Haworth for more than five years and which he was continuing to make (R. 21). Petitioner, therefore, brought this suit for the purpose of obtaining a

decision as to whether Edwin P. Haworth has been permanently and totally disabled as he claims, and as to whether petitioner is entitled to treat the policies as lapsed and to close its files in regard to them, or must continue them as existing obligations. Petitioner prayed a declaratory decree that the policies are null and void, except for the $45.00 of extended insurance above mentioned (R. 24).

The District Court opinion held in substance: that no "actual controversy" existed because a company against whom a liability was asserted could not maintain a suit for a declaratory judgment in advance of institution of suit by the person who asserts the breach and claims the damage (R. 133); and that there were no "rights" to be declared because the rights referred to in the Act are rights of a petitioning party to some sort of "relief" (R. 133).

The Circuit Court of Appeals (Circuit Judges Stone, Woodrough and Thomas, Judge Thomas writing (R. 145-150), Judge Woodrough dissenting) affirmed the decree, holding that the petition failed to state facts disclosing an actual controversy in the constitutional sense because the facts averred did not show that any right of petitioner was presently being invaded or imminently and prejudicially affected by the acts of respondents (R. 150).

Dissenting (R. 150-155), Judge Woodrough was of the opinion that the threat to the petitioner's right was imminent in the controlling sense that it was practically certain to materialize in action; that there was an alleged determination to hold the petitioner to certain obligations

indistinguishable from the alleged determination of the taxing officers to hold the railway company in *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Wallace*, 288 U. S. 249, and that that case was completely controlling (R. 153); he was also of the opinion that a controversy was presented as to whether the legal relation of insured and insurer existed between the parties, together with the attendant rights, duties and privileges pertaining to such relation (R. 153).

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred:

(1) In holding that persistent claims of rights to present cash disability benefits and petitioner's denials thereof, do not present an actual controversy.

(2) In holding that persistent demands for maintenance by petitioner of life insurance policies as continuing obligations and petitioner's denials of its duty to do so, do not present an actual controversy.

(3) In holding that irreparable injury must be shown.

(4) In affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT.

I.

Conflict with Another Circuit Court of Appeals on Same Matter.

The decision of the Circuit Court of Appeals conflicts with the decision of the Circuit Court of Appeals for the

Fifth Circuit in *Gully* v. *Interstate Natural Gas Co.*, 82 F. (2d) 145 (certiorari denied June 1, 1936, Vol. 80, Sup. Ct. Law Ed., Adv. Op. 967). In that case the plaintiff brought a bill in equity under the Declaratory Judgment Act against the Mississippi State Tax Collector and others, alleging that the latter had determined to make final an assessment on the plaintiff's property, to fix a lien thereon, and to sell plaintiff's property and collect the tax, which the plaintiff alleged was not leviable or collectible because of an applicable exemption, and therefore refused to pay. In the opinion by Hutcheson, Circuit Judge, at page 149, it was said:

> "We think, too, the court was right in the view it took on final hearing, that the supplementary bill for declaratory judgment was properly brought, and that the case was one for such a judgment. For while it may not be doubted that the Federal Declaratory Judgment Act is a purely remedial statute, and does not purport to, nor does it, add to the content of the jurisdiction of the national courts, it certainly does purport, in cases where federal jurisdiction is present, to effect and we think it does, effect thorough-going, remedial changes, by adding to the coercive or warlike remedies in those courts by way of prevention and of reparation, the more pacific and more prophylactic one of a declaration of rights. When, then, an actual controversy exists, of which, if coercive relief could be granted in it the federal courts would have jurisdiction, they may take jurisdiction under this statute, of the controversy to grant the relief of declaration, either before or after the stage of relief by coercion has been reached (citing cases).
>
> "We are aware that the statute has been given a more restrictive cast. *Columbia Nat. Life Ins. Co.* v. *Foulke*, 13 F. Supp. 350 (D. C. W. D. Mo.). We

> are not in accord with this view. We see no reason why the statute should not, we think it should, be given the prophylactic scope to which its language, in the light of its purpose, extends, under it disputants as to whose rights there is actual controversy, may obtain a binding judicial declaration as to them, before damage has actually been suffered, and without having to make the showing of irreparable injury and the law's inadequacy required for the granting of ordinary preventive relief in equity."

In the Foulke case (also decided in the District Court by Judge Otis), a life insurance company brought suit for a declaratory judgment against a beneficiary claiming a death benefit. In the case at bar, claim is being made by respondents for disability benefits. So far as the existence of actual controversy is concerned, it is submitted that there is no substantial difference between the two cases, and the express disapproval of the Foulke case by the Fifth Circuit Court of Appeals clearly shows the irreconcilable conflict between the decision of that court in the Gully case and the decision of the Circuit Court of Appeals in the case at bar. In addition to this, there is a direct conflict between the two decisions as to whether it is necessary to show irreparable injury or the law's inadequacy.

It is true that in the Gully case there is a specific allegation that the defendants had determined to collect the tax, while such specific allegation is lacking in the case at bar. However, the bill in the case at bar alleges frequent, formal and insistent demands for performance and unquestionably reveals a determination ultimately to enforce them by action, particularly when it is noted that the respondents are shown to have ultimately ceased the

payment of premiums before this action was commenced and thus to have irrevocably and exclusively grounded the continuance of this large amount of life insurance in their reliance on their claims for disability benefits. That this does not in principle constitute a distinction, is clearly pointed out by Judge Woodrough in his dissenting opinion where he says that there is an alleged determination to hold petitioner to certain obligations—indistinguishable from the alleged determination of the taxing officers to hold the railway company in *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Wallace,* 288 U. S. 249 (R. 154).

The attention of the Court is respectfully directed also to two cases in which life insurance companies brought suits under practically identical facts and in which the respective District Courts rendered decisions directly in conflict with the decision of the Court of Appeals in this case. *Travelers Ins. Co.* v. *Helmer,* 15 F. Supp. 355 (D. C. Ga., May 5, 1936), and *New York Life Ins. Co.* v. *London,* 15 F. Supp. 586 (D. C. Mass., July 3, 1936).

In the Helmer case, Circuit Judge Sibley, sitting in the District Court, said (l. c. 356):

> "The issue there is whether the insured ought to pay, and the insurance company is entitled to collect full premiums in order to maintain the policies in being. Both parties are interested in knowing their rights in this respect. The status of these policies is important to both to be determined. The remedy by declaratory judgment seems to be of ideal application to such a case."

II.

Conflict with Applicable Decisions of This Court.

The decision of the Circuit Court of Appeals is contrary to the opinion of this Court in *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Wallace*, 288 U. S. 249. Its facts were practically identical to those in the *Gully Case, supra*, decided in the Fifth Circuit Court of Appeals, *i. e.*, the plaintiff railway company sought a judgment under the Tennessee declaratory judgment act for the determination of a controversy arising from the defendant taxing official's assertion that a tax was payable by the plaintiff, the payment of which he demanded and threatened to enforce despite the plaintiff's denial of liability and refusal of payment. In deciding that the case presented a justiciable controversy, this Court pointed out that the Tennessee act conferred jurisdiction on Tennessee courts "to declare rights * * * whether or not further relief is or could be claimed," and said in the opinion by Mr. Justice Stone, at page 262:

> "The relief sought is a definitive adjudication of the disputed constitutional right of the appointment, in the circumstances alleged, to be free from the tax, * * *. Obviously the appellant, whose duty to pay the tax will be determined by the decision of this case, is not attempting to secure an abstract determination by the Court of the validity of a statute, * * * or a decision advising what the law would be on an uncertain or hypothetical state of facts. * * *."

The dissenting opinion of Judge Woodrough in the case at bar clearly states the conflict between the majority opinion in the Circuit Court of Appeals and the decision of

this Court in the Wallace case. Judge Woodrough says (R. 151):

> "I think the petition presents a 'case' or 'controversy' justiciable by the courts of the United States under the decision of the Supreme Court in *Nashville, etc., Ry. Co.* v. *Wallace*, 288 U. S. 249."
>
> . . . . . .
>
> (R. 153) "But there is a present, clearly-defined claim of right on both sides. The threat to the company's right is imminent in the controlling sense that it is practically certain to materialize in action—being deferred in point of time merely, to the detriment and increased vexation of the company. The insured demands present payment of certain sums and makes present demand that certain insurance be maintained. There is an alleged determination to hold the company to certain obligations—indistinguishable from the alleged determination of the taxing officers in Tennessee to hold the railway company as set forth in the Wallace case. That case is completely controlling."

There is a further conflict with the Wallace case on the question of the necessity of alleging irreparable injury. The Circuit Court of Appeals says (R. 149):

> "It is not shown that the business of plaintiff is prejudicially affected in any way by the alleged acts of the defendants. The alleged irreparable injuries to the plaintiff enumerated in the petition, when examined, are found wanting in the essential constitutional ingredients of a controversy."

In the Wallace case, this Court said, at page 264:

> "As the prayer for relief by injunction is not a necessary prerequisite to the exercise of judicial power, allegations of threatened irreparable injury which are material only if an injunction is asked,

may likewise be dispensed with if, in other respects, the controversy presented is, as in this case, real and substantial."

The decision of the Circuit Court of Appeals is also in conflict with this Court's decision in *Fidelity National Bank & Trust Co.* v. *Swope,* 274 U. S. 123, l. c. 131, where it was held that the issues in a previous suit brought by the city under the provisions of its charter, to determine the validity of an ordinance authorizing public works and the validity of proposed liens upon the lands of benefited property owners, constituted a justiciable controversy, just as they would if raised and determined in a suit for injunction brought by a taxpayer, and that they could not be deemed any the less so because through a modified procedure the parties were reversed and the same issues were raised and finally determined at the behest of the city. On the facts in the case at bar, respondents could have maintained a suit under conventional equity practice for a decree setting aside petitioner's cancellation of the policies and declaring them in force as existing obligations (*Missouri Cattle Loan Co.* v. *Great Southern Life Ins. Co.,* 330 Mo. 988, l. c. 999, 52 S. W. (2d) 1; *Davis* v. *New York Life Ins. Co.,* 47 F. (2d) 1051, l. c. 1055; 6 Couch Cyc. of Ins. Law, Sec. 1429, and cases cited). Such a suit would raise the same issues as in the case at bar, the only difference being the reversal of the parties. Yet, the Circuit Court of Appeals in effect holds that such a reversal of the parties deprives this case of the necessary elements of actual controversy and thus it conflicts with the decision of this Court in the Swope case.

III.

Need for Direct Supreme Court Decision of an Important Question of Federal Law.

The Circuit Court of Appeals has decided an important question of federal law which has not been directly decided by this Court but should be settled by it. The scope to be given the Act is without doubt an important question of federal law. The Act is comparatively new and has never received an authoritative construction by this Court.(1) Even in a narrow aspect the case involves the right of life insurance companies to have a determination whether policies must be maintained in force without the payment of premiums, which is a matter of great importance both to the companies and to the policyholders. It was said by this Court in the case of *New York Life Ins. Co.* v. *Statham*, 93 U. S. 24, l. c. 30-31, that unless forfeiture for nonpayment of premiums were enforceable, the business of a life insurance company "would be thrown into utter confusion"; that the insured parties have an associated relation in a great scheme, whether the company be a mutual one or not; that each is interested in the engagements of all, "for out of the coexistence of many risks arises the law of average, which underlies the whole business."

In its broader aspect, the case involves the question of the right of a party to any contract, who would normally be a defendant under older forms of legal procedure, to ask for a judicial declaration under the Act of his

(1) In Ashwander v. Tennessee Valley Authority, 297 U. S. 288, 325, the Act was briefly discussed but its provisions were not elucidated.

privileges or absence of duty and of his immunities as to matters which are in actual dispute, where the party who would normally be plaintiff, in the absence of the statute, has taken no action but made harassing demands and claims.

And this case likewise involves the broad question as to whether the Act is to be given a construction which will carry out the intent of Congress to permit the determination of "rights and *other legal relations*" (Section 1), *i. e.*, not only "rights" in the narrow sense, but privileges, powers, immunities, duties, liabilities and disabilities of the parties to a written contract, and give it a scope identical with that prevailing under English Order XXV, Rule 5 (Borchard, Declaratory Judgments, 74, 80, 25), from which the Federal Declaratory Judgment Act was taken, or whether it is to be hedged about with limitations which will defeat the language of the statute and destroy its effective use as an instrument for the speedy, inexpensive and efficient settlement of controversies at their inception.

The importance of the question involved is shown by the numerous reported federal decisions in cases brought and constantly being brought under the Act. Great conflict and confusion is shown in these decisions, as to both the meaning of the Act and the application of the principles stated by this Court in *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Wallace*, 288 U. S. 249. While petitioner believes that the decision in the Wallace case is controlling here, the Circuit Court of Appeals has reached an opposite conclusion.

The Circuit Court of Appeals denies the right of petitioner to obtain a declaratory decree that life insurance policies have lapsed for nonpayment of premiums. As stated above, exactly the contrary result has been reached in the case of *Travelers Insurance Co.* v. *Helmer*, 15 F. Supp. 355 (D. C. Ga., May 5, 1936), and in *New York Life Ins. Co.* v. *London*, 15 F. Supp. 586 (D. C. Mass., July 3, 1936). In both the Helmer and London cases the insured claimed the benefit of provisions for waiver of premiums on account of disability. In both cases the courts decided that suits for declaratory judgment were maintainable by the life insurance companies. In the London case the Court specifically refused to follow the decision of Judge Otis in the District Court in this case (l. c. 590), and in part approved (l. c. 588) and in part disapproved (l. c. 590) the language of the same District Judge in the Foulke case. The opinion in the London case reviews a number of decisions which have been rendered under the Act and the Court's discussion well illustrates the existing conflict in these decisions.

In *Ohio Casualty Insurance Co.* v. *Plummer*, 13 F. Supp. 169 (D. C. Tex.), and in *Commercial Casualty Co.* v. *Humphrey*, 13 F. Supp. 174 (D. C. Tex.), the Court construed the Act, in harmony with the Gully case and contrary to the decision in this case, as authorizing an action by an automobile liability insurer against its insured and various persons having damage claims against him to determine the company's obligations under its policy.

In *Lionel Corp.* v. *De Filippis*, 11 F. Supp. 712 (D. C. N. Y.), the Court upheld a suit under the Act as proper

to determine that the plaintiff was not infringing defendant's patents as the defendant had claimed. Of similar effect is *Zenie Bros.* v. *Miskend,* 10 F. Supp. 779 (D. C. N. Y.). Yet, in *New Discoveries, Inc.,* v. *Wisconsin Alumni Research Foundation,* 13 F. Supp. 596 (D. C. Wis.), a motion to dismiss a similar action was sustained for lack of actual controversy.

The weight of authority under the many state declaratory judgment acts (and under English practice), the provisions of which are essentially similar to the federal Act, permits the rendering of declaratory judgments in cases similar to the one at bar. See *Utica Mutual Ins. Co.* v. *Glennie,* 132 Misc. 899, 230 N. Y. S. 673; *Post* v. *Metropolitan Casualty Ins. Co.,* 227 App. Div. 156, 237 N. Y. S. 64; *American Motorists' Ins. Co.* v. *Central Garage,* 86 N. H. 362, 169 Atl. 121; *J. Sullivan & Sons Mfg. Co.* v. *Ideal Bldg. & Loan Assn.,* 313 Pa. 407, 170 Atl. 263; *Owen* v. *Fletcher Savings & Trust Bldg. Co.,* 99 Ind. App. 365, 189 N. E. 173; *Tolle* v. *Struve,* 124 Cal. App. 263, 12 Pac. (2d) 61; *Woodward* v. *Fox West Coast Theaters,* 36 Ariz. 251, 284 Pac. 350; *Carolina Power & Light Co.* v. *Iseley,* 203 N. C. 811, 167 S. E. 56; *Guaranty Trust Co. of New York* v. *Hannay & Co.,* (C. A.) 2 K. B. 536.

From this it is clear that the decision of the Circuit Court of Appeals in the case at bar rather than clarifying this confusion, has only added to it, that litigants and counsel, both, are of necessity utterly confounded when seeking to employ the procedural reform intended to be accomplished by the Act, and that this undesirable situation should be clarified by this Court in the public

interest. An authoritative decision of the question presented by this case would settle the confusion since it covers the questions upon which the various courts are in conflict in the cases so far decided under the Act and under similar state acts.

It may be added that in determining the question of fact whether the insured Haworth is or is not totally and permanently disabled, the central issue of this case, his right to a jury trial is fully preserved by the Declaratory Judgment Act.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued, directed to the said United States Circuit Court of Appeals for the Eighth Circuit, commanding that court to certify and send to this Court for its determination, on a day certain to be therein named, a full and complete transcript of the record and of the proceedings of said Circuit Court of Appeals had in the case numbered and entitled on its docket as 10562, *Aetna Life Insurance Company of Hartford, Connecticut, a Corporation, Appellant,* v. *Edwin P. Haworth and Cora M. Haworth, Appellees,* to the end that this cause may be reviewed and determined by this Court as provided for in the statutes of the United States; and that the decree herein of the said Circuit Court of Appeals be reversed by this Honorable Court, and for such further relief as to this Court may seem proper.

Aetna Life Insurance Company of Hartford, Connecticut, a Corporation,

By E. R. Morrison,
Counsel for Petitioner.

Chas. C. Byers,
Douglas Stripp,
Morrison, Nugent, Wylder & Berger,
Of Counsel.